208 A.D.3d 843
Supreme Court, Appellate Division,
Second Department, New York.

Edward Clinton CARTER, appellant,

v.

CITY OF NEW ROCHELLE,
et al., respondents.

2019–12520, 2019–14686
|
(Index No. 55298/13)
|
Argued—June 23, 2022
|
August 31, 2022

Synopsis

Background: Leading motorist brought personal injury action against following motorist for alleged injuries sustained in motor vehicle accident. After a jury trial, the Supreme Court, Westchester County, Gerald E. Loehr, J., denied leading motorist's motion to set aside jury verdict awarding him damages for past pain and suffering and past medical expenses but not awarding him any damages for future pain and suffering and future medical expenses, and denied leading motorist's motion for a new trial on issue of damages. Leading motorist appealed.

The Supreme Court, Appellate Division, held that jury verdict was not based upon fair interpretation of the evidence and was inadequate to extent indicated.

Ordered accordingly.

Attorneys and Law Firms

William Schwitzer & Associates, P.C., New York, NY (Howard R. Cohen and D. Allen Zachary of counsel), for appellant.

O'Connor McGuinness Conte Doyle Oleson Watson & Loftus, LLP, White Plains, NY (Heather M. Haralambides of counsel), for respondents City of New Rochelle and Robert Boyko.

Scahill Law Group, P.C., Bethpage, NY (Gerard Ferrara of counsel), for respondents Louis Santiago and Catalino Ramos.

COLLEEN D. DUFFY, J.P., VALERIE BRATHWAITE NELSON, PAUL WOOTEN, JOSEPH A. ZAYAS, JJ.

DECISION & ORDER

*1 In an action to recover damages for personal injuries, the plaintiff appeals from (1) an order of the Supreme Court, Westchester County (Gerald E. Loehr, J.), dated October 11, 2019, and (2) an order of the same court dated December 13, 2019. The order dated October 11, 2019, denied the plaintiff's motion pursuant to CPLR 4404(a) to set aside a jury verdict awarding him damages in the principal sums of only $5,000 for past pain and suffering, $10,000 for past medical expenses, $0 for future pain and suffering, and $0 for future medical expenses, as, inter alia, inadequate and contrary to the weight of the evidence, and for a new trial on the issue of damages. The order dated December 13, 2019, insofar as appealed from, upon reargument, adhered to the determination in the order dated October 11, 2019.

ORDERED that the order dated October 11, 2019, is reversed, on the facts, the plaintiff's motion pursuant to CPLR 4404(a) to set aside the jury verdict awarding him damages in the principal sums of only $5,000 for past pain and suffering, $10,000 for past medical expenses, $0 for future pain and suffering, and $0 for future medical expenses and for a new trial on the issue of damages is granted, the order dated December 13, 2019, is vacated, and the matter is remitted to the Supreme Court, Westchester County, for a new trial on the issue of damages and for the entry of an appropriate judgment thereafter, unless, within 30 days after service upon the defendants of a copy of this decision and order with notice of entry, the defendants serve and file in the office of the Clerk of the Supreme Court, Kings County, a written stipulation consenting to increase the damages awards for past pain and suffering from the principal sum of $5,000 to the principal sum of $80,000, past medical expenses from the principal sum of $10,000 to the principal sum of $40,000, future pain and suffering from the principal sum of $0 to the principal sum of $100,000, and future medical expenses from the principal sum of $0 to the principal sum of $100,000, and to the entry of a judgment accordingly; in the event that the defendants so stipulate, then the matter is remitted to the Supreme Court,

Westchester County, for the entry of a judgment accordingly; and it is further,

ORDERED that the appeal from the order dated December 13, 2019, is dismissed as academic in light of the determination on the appeal from the order dated October 11, 2019; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

On July 3, 2012, a police vehicle owned by the defendant City of New Rochelle and driven by the defendant Robert Boyko, a police officer employed by the City, struck the rear of a vehicle owned by the defendant Catalina Ramos and driven by the defendant Louis Santiago. At the time of the accident, the plaintiff was a passenger in the front seat of the vehicle driven by Santiago. The plaintiff subsequently commenced this action against the defendants to recover damages for the personal injuries he allegedly sustained as a result of the accident. A jury trial was held, after which the jury rendered a verdict finding the defendants liable for the subject accident, and that the plaintiff had sustained a permanent consequential limitation of use of a body organ or member and a significant limitation of use of a body function or system as a result of the subject accident. The jury awarded the plaintiff the principal sums of $5,000 for past pain and suffering, $10,000 for past medical expenses, $0 for future pain and suffering, and $0 for future medical expenses. The plaintiff then moved pursuant to CPLR 4404(a) to set aside the jury's verdict on damages as, inter alia, inadequate and contrary to the weight of the evidence, and for a new trial on the issue of damages. The defendants opposed the motion. In an order dated October 11, 2019, the Supreme Court denied the plaintiff's motion. The plaintiff then moved for leave to reargue his motion. In an order dated December 13, 2019, the court granted the plaintiff leave to reargue, and upon reargument, adhered to its original determination in the October 11, 2019 order. The plaintiff appeals.

***2** A jury verdict on the issue of damages may be set aside as contrary to the weight of the evidence only if the evidence on that issue so preponderated in favor of the movant that the jury could not have reached its determination on any fair interpretation of the evidence (*see Lolik v. Big v Supermarkets,* 86 N.Y.2d 744, 746, 631 N.Y.S.2d 122, 655 N.E.2d 163; *Chung v. Shaw,* 175 A.D.3d 1237, 1239, 108 N.Y.S.3d 47; *Williams v. City of New York,* 71 A.D.3d 1135, 1137, 898 N.Y.S.2d 208). Further, while the amount of damages to be awarded for personal injuries is a question for the jury, and the jury's determination is entitled to great deference (*see Chung v. Shaw,* 175 A.D.3d at 1239, 108 N.Y.S.3d 47; *Vainer v. DiSalvo,* 107 A.D.3d 697, 698, 967 N.Y.S.2d 107), a jury award may be set aside if it deviates materially from what would be reasonable compensation (*see* CPLR 5501[c]; *Harvey v. Mazal Am. Partners,* 79 N.Y.2d 218, 225, 581 N.Y.S.2d 639, 590 N.E.2d 224; *Chung v. Shaw,* 175 A.D.3d at 1239, 108 N.Y.S.3d 47).

Where, as here, "the jury ... concludes that a plaintiff was injured as a result of an accident, the jury's failure to award damages for pain and suffering is contrary to a fair interpretation of the evidence and constitutes a material deviation from what would be reasonable compensation" (*Zimnoch v. Bridge View Palace, LLC,* 69 A.D.3d 928, 929–930, 893 N.Y.S.2d 253 [internal quotation marks omitted]; *see Larkin v. Wagner,* 170 A.D.3d 1145, 1148, 96 N.Y.S.3d 664; *Ciatto v. Lieberman,* 1 A.D.3d 553, 557, 769 N.Y.S.2d 48; *Califano v. Automotive Rentals,* 293 A.D.2d 436, 437, 740 N.Y.S.2d 117; *see also Avissato v. McDaniel,* 168 A.D.3d 653, 654, 91 N.Y.S.3d 236). Under the circumstances of this case, the jury's failure to award any damages for future pain and suffering and future medical expenses was not based upon a fair interpretation of the evidence, and was inadequate to the extent indicated (*see Rojas v. Brabant,* 192 A.D.3d 934, 935, 140 N.Y.S.3d 727; *Chung v. Shaw,* 175 A.D.3d 1237, 108 N.Y.S.3d 47; *Cicola v. County of Suffolk,* 120 A.D.3d 1379, 993 N.Y.S.2d 131; *Sanz v. MTA–Long Is. Bus,* 46 A.D.3d 867, 849 N.Y.S.2d 88).

Further, the jury's award for past pain and suffering and past medical expenses was inadequate to the extent indicated (*see Lara v. Arevalo,* 205 A.D.3d 700, 168 N.Y.S.3d 499; *Chung v. Shaw,* 175 A.D.3d 1237, 108 N.Y.S.3d 47; *Coleman v. Karimov,* 173 A.D.3d 669, 103 N.Y.S.3d 146; *Rozmarin v. Sookhoo,* 172 A.D.3d 1415, 102 N.Y.S.3d 67; *Knight v. Barsch,* 154 A.D.3d 834, 62 N.Y.S.3d 480; *Eastman v. Nash,* 153 A.D.3d 1323, 61 N.Y.S.3d 608).

In light of our determination, we do not reach the plaintiff's remaining contention.

DUFFY, J.P., BRATHWAITE NELSON, WOOTEN and ZAYAS, JJ., concur.

All Citations

--- N.Y.S.3d ----, 208 A.D.3d 843, 2022 WL 3904591, 2022 N.Y. Slip Op. 05072

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